

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
UNIVERSITY SYSTEM OF THE)	File No. BPLIF-940317DJ
ANA G. MENDEZ FOUNDATION)	Facility ID No. 22904
Cayey, Puerto Rico)	
)	
CATHOLIC ARCHDIOCESE OF)	File No. BPLIF-941201DB
SAN JUAN)	Facility ID No. 9337
Cayey, Puerto Rico)	
)	
For Construction Permit and License)	
In the Instructional Television Fixed)	
Service on Channels A1, A2, A3 and A4)	

ORDER ON RECONSIDERATION

Adopted: March 7, 2002

Released: March 15, 2002

By the Mass Media Bureau:

1. The Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration a petition filed by the Catholic Archdiocese of San Juan (the Archdiocese) seeking reconsideration of the Memorandum Opinion and Order granting the above-captioned application of University System of the Ana G. Mendez Foundation (Mendez) on the A channel group at Cayey, Puerto Rico, and denying the mutually-exclusive application filed by the Archdiocese. Applying the then-existing comparative selection process, *Instructional Television Fixed Service – Second Report and Order* in MM Docket 83-523, 101 FCC 2d 49, 65-72 (1985), the Bureau concluded that Mendez was entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and two points for proposing at least 41 hours of formal educational programming per channel per week. While the Archdiocese was entitled to the same number of points for being local, accredited and observing the four-channel limitation, The Bureau concluded that it was not entitled to any programming merit points. Because Mendez was entitled to eleven points and the Archdiocese to only nine points, the new station authorization was awarded to Mendez.

2. On reconsideration, the Archdiocese asserts, first, that Mendez's application should have been dismissed because the proposed facility would cause harmful interference within the protected service area of ITFS station WLX-321, Aguas Buenas, Puerto Rico, licensed to the Archdiocese. In response, Mendez states that the Archdiocese's interference claim is unjustifiably late, being raised for the first time on reconsideration, and also fails to address the requirements of Section 1.106(c) of the Commission's rules, which states the circumstances under which the Commission will grant a petition for reconsideration which relies on facts not previously presented to the Commission. Mendez also submits a statement from its consulting engineer which indicates that no interference is predicted to occur within the protected service area of station WLX-321 due to intervening terrain, which is consistent with the staff's earlier engineering analysis. Thus, we conclude that no objectionable interference should result to station WLX-321 from the operation of Mendez's proposed facility.

3. The Archdiocese also argues that the Bureau erred in awarding Mendez two points for observing the four-channel limitation set forth at Section 74.902(d) of the Rules, which limits ITFS licensees to four channel for use in a single area of operation, absent a waiver, because Mendez holds licenses for four ITFS stations within 20 miles of the proposed Cayey transmitter site. However, at the time Mendez filed its application, the Commission defined an area of operation as the area in which the use of channels by one licensee precludes their use by other licensees. *See* 47 C.F.R. § 74.902(d)(1994). Because service to Cayey from other Mendez transmitters is blocked from intervening terrain, the Cayey facility is located in a separate “area of operation” for purposes of the Commission’s four-channel limit. Thus, Mendez was not required to request a four-channel waiver and the Bureau correctly awarded Mendez two points for observing the four-channel limit.¹

4. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by the Catholic Archdiocese of San Juan IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

¹ Because we are denying reconsideration, we do not need to reach Mendez’s argument that the Bureau should have dismissed the Archdiocese’s application as untimely filed.